IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

GURDEEP SINGH & ORS V/S STATE OF RAJ & ORS

S.B.CIVIL WRIT No. 4517 of 1994

UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Date of order : 15. 2. 2007

PRESENT
HON'BLE SHRI N.P.GUPTA,J.

Mr. MC Bhoot, for the petitioner.
Mr. KC Sharma for Mr. Mridul Jain, for the respondent.
Mrs. RR Kanwar, A.G.A.

BY THE COURT:

This petition has been filed by the petitioners seeking to challenge the order Annexure-13, passed by the learned Board of Revenue dt. 26.8.1994, and for a direction to the Revenue Authorities, to regularise the land in dispute in the name of the petitioner, under the provisions of Rajasthan Colonisation Act.

The facts of the case are, that the land in question was allotted to one Sadhu Singh on 6.1.69, thereafter Sadhu Singh sold the land in question by registered sale deed dated 19.12.73 to the petitioner. The case of the petitioner is, that since then petitioners are

continuing in possession; however without any intimation or any notice or publication on the spot, came to be passed some orders dated 25.10.85 and 20.11.85, that the land in question may be taken possession of in favour of the state government, but then as a matter of fact they remained only paper orders, and the possession continued with the petitioners. It was then alleged, that the entry in revenue record in the name of State was effected for the first time on 6.5.91, while before that date, on 30.1.90 the petitioners had deposited Rs.1543/-, vide Challan No.13/142. It is then alleged, that after the mutation was entered in the name of State, on 5.6.1991 the private respondent no. 5 applied for allotment of land to him, and in collusion with the authorities, the case was registered on the same date, and vide order dt. 18.6.1991 the land was allotted to the respondent no.5. It is alleged, that within such a short time, since the date of mutation in the name of the State, the land could possibly be not advertised, and the procedure prescribed for allotment could not have been followed. According to the petitioner when they came to know of this allotment, they filed appeal, and since the alleged cancellation of allotment in favour of Sadhu Singh was also illegal, that was also challenged by way of appeal, and the learned Revenue Appellate Authority condoned the delay in filing the appeal, and found the allotment in favour of respondent no.5 to be without jurisdiction, and the matter was remanded to the learned

S.D.O., with a direction to receive the compounding fees, and then to regularise the land in favour of the petitioners. This order dt. 11.6.1992 has been produced as Annexure-4. Then, it is alleged that on petitioner's application the Collector obtained report from Patwari about actual physical possession, and that report of the Patwari has been produced as Annexure-7. Then, various other documents have been produced regarding cultivation, and payment of irrigation charges. The learned Board of Revenue, vide order dt. 26.8.1994 (Annexure-13) has set aside the order of the Revenue Appellate Authority (Annexure-4). With these factual averments, the writ petition has been filed seeking the above reliefs.

Reply has been filed on behalf of respondents no. 1, 3, and 4. The main stand taken in the reply is, that the judgments passed by the learned courts below are valid, justified, and well within jurisdiction, and passed after thorough consideration of the record, and pleading of the parties, in accordance with law governing the field, which deserve to be sustained and maintained by this Court. Suffice it to say, that it is not clear, as to whether the respondents are seeking to support the order of the Board or the Revenue Appellate Authority. Be that as it may.

During pendency of this writ petition, an application was filed by one Kripal Singh for withdrawal of

the writ petition on the basis of some compromise, but then since no compromise was arrived at, the application for withdrawal of the writ petition was withdrawn. Then, vide order dt. 13.7.1998 the writ petition was admitted. Then, the matter came up for hearing before Hon'ble Mr. Justice Dinesh Maheshwari on 15.7.2005, and for reasons recorded in the order, it was directed that the record of the Appeals No. 146/91, 148/91 and 199/91 decided on 11.6.1992 by the Revenue Appellate Authority, Sri Ganganagar, and the record of Appeals No. L.R./73/92/Ganganagar and L.R./74/92 Sri Ganganagar decided on 26.8.1994 by the Board of Revenue be requisitioned. That record has been requisitioned, and thereafter the matter was argued.

It was contended by the learned counsel for the petitioners, by referring to two orders dt. 25.10.1985 and 20.11.1985, that they were only paper orders and possession was never taken from the petitioner, and therefore, in view of the provisions of Section 13-A, the petitioners are entitled to regularisation of the land. It was contended, that the learned Board of Revenue has proceeded on the basis, that vide order dt. 25.10.1985 the land was ordered to be resumed, as nobody appeared on the side of the petitioner, nor any reply was filed, and vide order dt. 20.11.1985, orders were issued to take possession, and that in those proceedings there is no provision for giving notice to the transferee, and since the allottee had

alienated the property without prior permission, the alienation is void, and the learned Revenue Appellate Authority has committed jurisdictional error in treating the present petitioner to be aggrieved party. According to the learned counsel for the petitioner this approach is wholly wrong, inasmuch as in view of the provisions of Section 13-A and 13-A(1-A), even if any such alienation was effected without prior to permission, it could be regularised, and has rightly been ordered by the learned Revenue Appellate Authority, to be regularised. Referring to Appeal No. 148/91, it has been observed by the learned Board of Revenue, that the land was taken possession of on 20.11.1985, and it was mutated on 6.5.1981, and according to Patwari's Ghatna Bahi the possession was taken on 30.11.1985. Thus the land was available for allotment, and has rightly been allotted, and no error can be found in allotment. In this regard it was contended, that the land, as a matter of fact, was never taken possession of, and did, and does, continue in petitioner's possession, and thus the very basic assumption of the learned Board of Revenue is wrong.

Learned counsel for the respondent no. 5, on the other hand, supported the impugned order Annexure-13.

I have considered the submissions, and have gone through the record of the writ petition, so also the

record, as requisitioned.

At the outset it may be observed, that the parties were not alive to the real controversy, as to how the proceedings started, for what purpose they started, and the propriety of the order dt. 25.11.1985 and 20.11.1985. In this regard I find, on record of the file of Revenue Appellate Authority, in Appeal No. 146/91, the certified copy of the notice, issued by the learned Addl. Collector, Sri Ganganagar, to Sadhu Singh, calling him upon to appear on 11.12.1984, which is available on record at page no. 39. The precise allegations in the notice are as under:-

"अप्रार्थी द्वारा हस्तान्तरण 7 वर्ष के मध्य/बाद म किया गया।
अप्रार्थी द्वारा समस्त किस्तें जमाकर हस्तान्तरण किया गया/नहीं किया गया ।"

Then, it is alleged that therein, that it is established that the aforesaid alienation is in violation of the provisions of Section 13 of the Act, and under orders of the State Government, the alienation made upto May 1983 can be declared to be valid in accordance with law, and therefore, the addressee be advised to pay Rs. 600/- per Bigha for Nahari, and Rs. 120/- for Barani, upto 30.12.1984. What is significant to note is, that in this notice, it was not contemplated, that on account of the alienation being in violation of Section 13, the allotment shall be cancelled, or that the possession of the land

shall be taken. In that view of the matter, irrespective of the fact, as to whether the addressee wanted to contest the notice or not, the only consequence was, that the amount at the rate stipulated therein was required to be deposited. It is in this sequence, that in the proceedings, the orders dt. 25.10.1985 and 20.11.1985, are said to have been passed. It is a different story, as to whether in view of the above, it was open to the authorities to direct possession of the land to be resumed or not, the fact also does remain, that the orders dt. 25.10.1985 and 20.11.1985 do not show, that possession has been taken, and even after going through the entire record of the learned Board of Revenue, as has been requisitioned, even very closely, I do not find anything on record to show, that the possession was taken vide Ghatna Bahi dt. 30.11.1985, as assumed by the learned Board of Revenue, in Annexure-13. That being the position, the very basic assumption about possession having been taken from the petitioner on 30.11.1985, and consequently the land being available for allotment in June 1991 is misplaced. It is again a different story, that had the land been taken possession in the year 1985, affecting of mutation would not have been delayed for such a long period of more than half a decade. This, coupled with the fact, that the allotment had been made, virtually immediately after mutation, does speak volume about possibilities of manipulations, at the behest of respondent no.5.

Then, the findings given by the learned Board of Revenue, in para-8, cannot be sustained on the basis of it, for the simple reason, that a look at the provisions of Section 13A would show, that thereunder, the right to apply for regularisation is not confined to be available to original allottee only, but is equally available, even to the transferee, under the transfer made in violation of Section 13, and therefore, since the petitioners claim to be transferee under registered sale deed dt. 19.12.1973, they were very much entitled to have the transfers regularised. Even they did deposit the amount of regularisation, as noticed above, way back on 30.1.1990, and in any case, since the petitioners are entitled to apply for regularisation, they very much were the persons affected by the orders dt. 25.11.1985, and 20.11.1985, and were entitled to challenge them by way of appeal, and on the face of language of Section 13-A including sub-sections 1 and 1-A, it cannot be said, that simply because the alienation was without prior permission, the alienees have no say, or that the Revenue Appellate Authority was in jurisdictional error, in entertaining the appeal of the petitioners, and directing the deposit of compounding fees by the petitioners. After the order Annexure-4, under consequent order Annexure-5, the petitioners had already deposited compounding fees.

Thus, considering from any stand point, viz. the notice being to advise to deposit the compounding fees, there being nothing on record to show that the petitioner had ever been dispossessed, and/or the possession was resumed to the State Government, and in any case in view of the language of Section 13-A including sub-section (1-A) the petitioners are entitled to have the alienation regularised. Thus, in my view, the learned Revenue Appellate Authority was perfectly right in passing the order Annexure-4, and the order of the learned Board of Revenue, being Annexure-13, cannot be sustained.

Accordingly, the writ petition is allowed. The impugned order Annexure-13 is quashed, and the order of the Revenue Appellate Authority Annexure-4 is restored. The parties shall bear their own costs. Records of the courts below be returned.

(N P GUPTA),J.

/Sushil/